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8 Attorneys for SUN MICROSYSTEMS, INC.,
9 MORGAN, LEWIS & BOCKIUS LLP, AND MAKING
10 A SPECIAL APPEARANCE FOR JEFFREY
11 KINGSTON, WHO HAS NOT BEEN SERVED

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA
15
16 SAN JOSE DIVISION

17 In re Application of Microsoft Corp.

18 Case No. 06-80038 JF (PVT)

19 **SUN MICROSYSTEMS INC., MORGAN,
20 LEWIS & BOCKIUS LLP, AND JEFFREY
21 KINGSTON'S, BY SPECIAL
22 APPEARANCE, MOTION TO AUGMENT
23 THE RECORD**

24 Date: To Be Set
25 Time: To Be Set
26 Before: Honorable Jeremy Fogel
27 Place: To Be Set

28 Complaint Filed: N/A
Trial Date: N/A

Pursuant to Civil L.R. 72-3(a) and (b), Sun Microsystems, Inc., Morgan, Lewis & Bockius LLP and, by special appearance, Jeffrey Kingston (“Sun Parties”) hereby move this Court for an order to supplement the record of the proceedings before the Magistrate.

On April 3, 2006, Microsoft Corporation (“Microsoft”) filed a Motion to Expand the Record seeking to supplement the record with the transcript from Hon. Mark Wolf of the United States District Court for the District of Massachusetts’s March 28, 2006 hearing on Novell, Inc.’s motion to quash a subpoena “substantially similar to the subpoenas at issue in this proceeding.” The Sun parties do not object to Microsoft’s Motion to Augment the record, assuming Microsoft will not object to this motion. The Sun Parties seek to augment the record further with documents that have been filed in the United States District Court for the District of Massachusetts proceedings after the hearing, as reflected in the transcript of Microsoft’s Motion to Augment that has been lodged with the Court. Since that time, the European Commission has filed two Amicus pleadings and Microsoft and Novell have filed several pleadings that contain information important for this Court’s consideration. The Court should supplement the record of the proceedings before the Magistrate to take into account these important subsequent events.

Sun seeks to supplement the record of the proceedings to include:

1. The Commission of the European Communities’ Motion to Intervene and accompanying memorandum and exhibits. *See* Declaration of James Penrod, Exhibit A.
2. Microsoft Corporation’s Response to Memorandum of Commission of the European Communities in Support of Novell, Inc.’s Motion to Quash. *See* Declaration of James Penrod, Exhibit B.
3. Microsoft Corporation’s Supplemental Statement Submitted Pursuant to Court Order. *See* Declaration of James Penrod, Exhibit C.
4. Response of Novell, Inc. to (1) Microsoft’s Response to Memorandum of Commission of the European Communities, and (2) Microsoft Corporation Supplemental Statement. *See* Declaration of James Penrod, Exhibit D.
5. Reply Memorandum of the Commission of the European Communities in Support

1 of Novell, Inc.'s Motion to Quash. *See* Declaration of James Penrod, Exhibit E.
2 6. Microsoft Corporation's Reply to Response of Novell, Inc. *See* Declaration of
3 James Penrod, Exhibit F.
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6 Dated: April 17, 2006

MORGAN, LEWIS & BOCKIUS LLP

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8 By _____/s/

9 James N. Penrod
10 Attorneys for SUN MICROSYSTEMS, INC.,
11 MORGAN, LEWIS & BOCKIUS LLP, AND
12 MAKING A SPECIAL APPEARANCE FOR
13 JEFFREY KINGSTON
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